

A.Nos.1806 & 2754 of 2019
in OP No.204 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 28.08.2019	Delivered on 06.09.2019
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application Nos.1806 & 2754 of 2019
in Original Petition No.204 of 2016

Sanjeev Ramachandran ... Applicant in both the Applications

Vs

Chandrika Sridhar ... Respondent in both the Applications

Prayer in Appl. No.1806/2019: Application is filed under Order XIV Rule 8 of the Original Side Rules read with Section 12 of Guardian and Wards Act, 1890 read with Section 151 of the Code of Civil Procedure, praying to pass an interim order granting the petitioner/applicant temporary custody of petitioner's minor daughter Akshara Sanjeev, from 04.00 pm on 22.03.2019 to 7.00 pm on 24.03.2019.

Prayer in Appl. No.2754/2019: Praying to grant interim visitation right of the petitioner's minor daughter Akshara Sanjeev, for the periods during her ongoing summer vacations.

For Applicant : Mr.M.L.Joseph
for M/s. Chennai Law Associates

For Respondent : Mr. Sriram
for M/s.A.S.Kailasam & Associates

Mr.P.H.Arvind Pandian
Amicus curie

COMMON ORDER

Application No.1806 of 2019 has been filed seeking temporary custody of the minor child Akshara Sanjeev, from 4.00 p.m. on 22.03.2019 to 7.00 p.m. on 24.03.2019. Application No.2754 of 2019 has been filed seeking interim visitation rights on certain specific dates during summer vacation between 14.04.2019 and 09.06.2019.

2. By an order dated 12.03.2019 in Application No.1806 of 2019, the applicant/ father of the child was allowed to have temporary custody of the child between 6.00 a.m. on 22.03.2019 and 7.00 p.m. on 24.03.2019. The said order has been complied with. Subsequently, during the course of hearing on these applications, it was found that the applicant had engaged a Detective Agency called Detective International to spy on the activities of the respondent/wife without her knowledge. The said Detective Agency had also filed a Report on 23.06.2016. Since the said report disclosed that the Detective Agency had under taken a surveillance of the respondent wife without her consent and knowledge and they had also taken photographs of the respondent/wife along with a child without her permission by gaining entry into the gated residential community CeeDeeYes Chennaipattinam which even according to them, is a closely guarded gated community, I have, by an order dated 26.04.2019 directed issuance of notice to the Detective Agency requiring them to appear before this Court and explain as to under what legal authority they spied on the respondent and took photographs of her, without her knowledge. Upon

receipt of the said notice, the Detective Agency had filed an affidavit claiming that they have a right to do so, since their profession itself was to carry out surveillance and report. Upon perusing the affidavit filed by the Detective Agency, I had entertained very serious doubts about the right of such Private Detective Agencies to spy on the people and take photographs, particularly of women and children, without their consent.

3. Since the activities, in my considered opinion, amounted to Human Right Violation, I had appointed Mr.P.H.Aravind Pandian, learned Additional Advocate General as Amicus Curie to assist the Court on the issues particularly, the right of Private Detectives to investigate on citizens' private affairs and take their photographs either in a public place or in a private place on 20.08.2019. Pursuant to the said order, Mr.Aravind Pandian, learned Additional Advocate General, Amicus Curie has filed his suggestions, wherein, he had stated that a Bill was sought to be introduced in the Parliament styled as Private Detective Regulation Bill, 2007. The Bill inter alia provided for constitution of Central Board which was intended to regulate the functions of Private Detective Agencies.

4. Section 3 of the Bill prescribed the Constitution and powers of the Central Board. Section 4 sets out the functions of the Central Board. Section 5 of the Bill also provide for the establishment of the State Board. The functions of the State Board are more or less similar to that of the Central Board. Section 9 of the Bill prescribed the qualifications and disqualifications for a person to be licensed as a Private Detective. Unfortunately, it is also stated that, the Bill eventually fell through and the same expired. Therefore, the learned Additional Advocate General would point out that there is no law governing the functions or regulating the profession of a Private Detective in the country as on today.

5. He would however point out that this Court has pronounced on the veracity of the evidence collected through Private Detectives in **Re:M.Rangarajulu Naidu and Ors**, reported in **AIR 1958 Mad 368**. The learned Additional Advocate General has also made the following suggestions with regard to the regulation of Private Detectives.

SUGGESTIONS

Thus, pending the passage of this Bill, the Hon'ble High Court may, in exercise of its constitutional powers, frame appropriate guidelines to regulate this business. The Hon'ble High Court may consider passing the following directions.

- *Constituting a State Board, comprising of a member from the Judiciary, from the Sate Home Department, a member from the State Intelligence Department, a member from the State Police Department; a nominee member from the State HRC and two eminent personalities. Two of the members of this Board should be women.*
- *The State Board may have the same functions as those mentioned in this Bill including licensing, collecting and maintaining information, etc. Information should be sent to the Board once in two months.*
- *A general direction that detectives in all cases, where they are giving evidence, must disclose the modus adopted by them in collecting the evidence, which modus may also be a part of*

the record where evidence is given. While this does not make the evidence itself inadmissible as the fruits of a poisonous tree doctrine is not applicable in India, the need to disclose and the possible liability ensuing therefrom will act as a deterrent against agent excesses.

6. He has also pointed out that there are Licensing Authorities appointed for licensing of Private Detectives in various countries which are as follows:

Legal Status of Private Detective Agencies in other jurisdictions

<i>Countries</i>	<i>Private Detective Work</i>	<i>Licensed Person</i>	<i>Licence Issuing/ Revoking Agency</i>	<i>Citizenship of Agent</i>
California, US	Investigating crimes, the antecedents or movements of a person, providing security, etc.	Agent	Director of Consumer Affairs	No requirement
Alberta, Canada	Obtaining information about the personal character, searching for missing persons, etc.	Agent	Administrator designated by Minister of Justice and Attorney General	No requirement
Queensland, Australia	Being paid to give information on another person	Agent	Chief Executive of Department	No requirement

<i>Countries</i>	<i>Private Detective Work</i>	<i>Licensed Person</i>	<i>Licence Issuing/ Revoking Agency</i>	<i>Citizenship of Agent</i>
Singapore (Existing)	Obtaining information about the personal character, searching for missing persons, etc.	Agent	Public Officer appointed by Minister	No requirement
India (proposed)	Unspecified	Agency	State or Central Board/ State or Central governments (revoking only)	Indian Citizenship required

Finally, he had concluded that it is discernable that the juristic grey area of the role and functions of the Private Detective Agencies and their personal need to be regulated through a State Policy.

7. It is rather shocking that a very important bill which attempted to regulate the profession of Private Detectives, which often involves violations of Human rights, was allowed to expire without the transforming in to an enactment. However, the need of the hour is that some concrete measure to regulate the profession of Private Detectives should be taken. Since the matter involves the right to carry on the profession by the Private Detectives as well as the Human Rights of the subjects, who are subjected

to surveillance by other individuals who often attempt to invade their privacy, I am of the considered opinion the matter has to be dealt with by a Division Bench of this Court as a Public Interest Litigation.

8. Hence I direct the Registry to place the papers before My Lord, the Hon'ble Chief Justice, for consideration and to take up the matter on the Writ Side as the Public Interest Litigation.

06.09.2019

Index : Yes/No
Internet: Yes/No
Speaking order/Non Speaking order
jv

Note: Registry is directed to place the Report of the Amicus Curie as well as the Report of the Detective Agency, which has been filed in the Typed Set, Copy of which enclosed here with, along with the order dated 26.04.2019 and 26.06.2019 before the Hon'ble Chief Justice.

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Pre Delivery Order

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The Application No.1806 of 2019 is closed, as the order passed on 12.03.2019, has been complied with. In Application No.2754 of 2019 is also closed as having become infructuous, since the dates on which the applicant sought for visitation are now over.

2. The Registry is directed to post the matter, before the Additional Master III, for continuation of evidence on 13.09.2019.

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